

LABOR COMMISSION OPEN MEETING MINUTES

April 2, 2008

9:30 p.m.

Heber M. Wells Building
160 East 300 South, Third Floor
Salt Lake City Utah 84114

PRESENT From the Labor Commission:

Alan Hennebold, Deputy Commissioner
Dr. Alan Colledge, Medical Director
Larry Bunkall, Industrial Accidents Division Director
Heather Morrison, UALD Director
Brent Asay, Wage Claim Manager
Robyn Barkdull, Public Information Officer

OTHERS PRESENT:

Cathy McKittrick, Salt Lake Tribune
Deborah Bulkely, Deseret News

Alan Hennebold began the meeting at 9:30 a.m. and explained that **Commissioner Hayashi** was in Price with Governor Huntsman, attending a bill signing ceremony regarding mining legislation, and had asked him to conduct the meeting.

Mr. Hennebold announced that he would take item #2 on the agenda first.

2. Proposed changes to the Medical Fee Schedule.

With consent of **Dr. Alan Colledge, Medical Director** and **Larry Bunkall**, Industrial Accidents Division Director, **Mr. Hennebold** stated that as there was no one from the public at the meeting with questions or comments on this issue, he would defer to the presentation regarding the changes to the Medical Fee Schedule which **Dr. Colledge** had made to the Workers' Compensation Advisory Council on March 19, 2008, as follows:

The Worker's Compensation Advisory (WCA) Council approved the recommended changes in 2008-2009 Medical Fee Schedule as defined and authorized in §34-2-407, Utah Code Annotated. The 2008 Federal RBRVS assigns a unit value to each medical procedure. The Labor Commission assigned conversion rates for each unit value in the RBRVS. Effective July 1, 2008, the Utah Labor Commission's conversion factor to be used with the RBRVS procedural unit value as per specialty will be:

\$46 Evaluation and Management (E&M) Codes 99201-99204 and 99211-99214
(an increase from \$45 to \$46)

\$46 Restorative Services
(an increase from \$44 to \$46) With codes 97001 & 97003 at 2.0 RVU)

It was noted that the agenda incorrectly showed Restorative Services with an increase from \$45 to \$46, but the correct amount was \$44 to \$46.

Mr. Hennebold said the Commission would continue through the rulemaking process with the Medical Fee Schedule.

1. R610-3-10. Proposed change to attorney fees in wage claims.

Heather Morrison, Utah Antidiscrimination and Labor Division Director, said this amendment would bring the current rule into compliance with the language of Section 34-28-13 of the Payment of Wages Act. The current rule allows for an award of attorneys' fees to private counsel for representing a claimant before the Commission, and cites Section 34-28-13 as authority for that award. However, Section 34-28-13 does not actually allow for an award of attorneys' fees to private counsel, and therefore the rule, as currently drafted, is confusing and inaccurate.

Ms. Morrison explained that before 1996, the Commission had a provision in the statute which allowed the awarding of reasonable private attorney fees. The statute changed in 1996, but the corresponding rule did not and the discrepancy has caused confusion among private counsel.

Mr. Hennebold asked **Ms. Morrison** if the Labor Commission could choose to keep the old rule intact. She replied that the Commission currently has not statutory authority to award private attorney fees, making the rule ineffective.

The rule will also increase the minimum for commission-appointed counsel, the county attorney or attorney general when those individuals represent employees in enforcing the Commission's wage orders. The current minimum is \$300, or one-third the amount of the award, whichever is greater. This will be increased to \$500 under the proposed rule.

As a point of clarification, the words "in addition to the award for wages" on line two of the rule will be taken out to avoid confusion.

Mr. Hennebold said he would report the proceedings of today's meeting to **Commissioner Hayashi** for final decision on the proposed rule.

Mr. Hennebold adjourned the meeting at 9:45.